

EXHIBIT 46

C O N F I D E N T I A L
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789(BRL)
Debtor.

-----x
IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
v. 09-1182(BRL)
J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,
Defendants.

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The videotaped deposition of DANIEL
GOTTILIEB, called for examination, taken pursuant
to the Federal Rules of Civil Procedure of the
United States Bankruptcy Courts pertaining to
the taking of depositions, taken before ANDREA
L. CARTER, CSR No. 84-3722, a Certified
Shorthand Reporter of said state, at Suite 3100,
191 North Wacker Drive, Chicago, Illinois, on
the 22nd day of October, A.D. 2012, at 10:03
a.m.

1 about the litigation protective order?

2 A. No.

3 Q. Are you familiar with Bernard
4 L. Madoff?

5 A. I don't personally know him,
6 but, yes, I am familiar with him.

7 Q. And are you familiar with
8 Bernard L. Madoff Investment Securities LLC?

9 A. Yeah.

10 Q. During our conversations
11 today, I may refer to the entity Bernard L.
12 Madoff Investment Securities LLC as BLMIS, and
13 when I am referring to Mr. Madoff in his
14 personal capacity, I will say Mr. Madoff. Is
15 that okay?

16 A. Okay, yeah.

17 Q. Can you please state your full
18 name.

19 A. Daniel Isaac Gottlieb.

20 Q. What's your current address?

21 A. My current address is 615
22 Harvard Street, Wilmette, Illinois.

23 Q. Where were you born?

24 A. New York City.

25 Q. What is your occupation

1 currently?

2 A. I am the chief investment
3 officer for Glen Eagle.

4 Q. Could you briefly describe
5 your educational history?

6 A. I have a bachelor's degree in
7 religion from Swathmore College. I have an
8 M.B.A. from Yale University.

9 Q. Any other degrees?

10 A. No.

11 Q. From the time you finished
12 your M.B.A., could you briefly walk me through
13 in chronological order your employment history?

14 A. I worked as a consultant for a
15 firm called AMS Planning and Research from the
16 summer of 2001 essentially through the summer
17 of 2005. At the end of the summer of 2005, I
18 took a sabbatical to work with Glen Eagle
19 Partners. I became officially and sort of
20 permanently employed by Glen Eagle at the
21 beginning of 2006.

22 Q. What is the Anne and Howard
23 Gottlieb Family Foundation?

24 A. It is a family foundation that
25 was essentially endowed with capital by my

1 relationship with Jeff's father-in-law going
2 back I think literally to when they were in
3 grade school, and he just wanted to sit down
4 and talk about the state of the world.

5 Q. Did Mr. Moskowitz recommend
6 Mr. Merkin as a possible investment?

7 A. Yes, he did.

8 Q. Did you meet Mr. Merkin?

9 A. I did.

10 Q. When?

11 A. I believe the first time was
12 at the very end of 2005, either November or
13 December.

14 Q. Do you consider yourself
15 friends with Mr. Merkin?

16 A. No.

17 Q. Would it be fair to say --
18 would it be fair to describe your relationship
19 to him as professional?

20 A. Yes.

21 Q. Okay. Apart from the social
22 connection you just described, do you have any
23 other ties to Mr. Merkin of a professional
24 nature?

25 A. Well, again, the connection

1 Q. Any others?

2 A. No.

3 Q. When -- what was the
4 approximate date of that investment?

5 A. I'm -- I'm really not sure.

6 Q. You stated that you first met
7 Mr. Merkin towards the end of 2005; is that
8 correct?

9 A. Yes.

10 Q. Was it in a relatively short
11 time frame after that meeting, say a year?

12 A. Well, I met him again in I
13 think I believe February of 2006, and I think
14 we invested fairly soon thereafter.

15 Q. Did the family foundation
16 invest in any of Mr. Merkin's funds?

17 A. The family foundation invested
18 in Ascot.

19 Q. When did that invest occur?

20 A. I think that was a couple
21 months after -- it may have been that Gabriel
22 could take money monthly and Ascot could
23 quarterly or something like that. I don't
24 remember the details.

25 Q. Were those two investments

1 non-taxable capital, that he thought it was an
2 interesting place to have money.

3 Q. What do you mean by "ordinary
4 income"?

5 A. Interest income. Income taxed
6 at a 35 percent rate.

7 Q. What was the basis of
8 Mr. Merkin's recommendation that it was not an
9 appropriate investment vehicle for a taxable --

10 MR. STEINER: Objection, form.

11 BY THE WITNESS:

12 A. That was it. Some combination
13 of reasonably low return and reasonably high
14 tax rates.

15 BY MR. JACOBS:

16 Q. The meeting you are referring
17 to was the meeting you described earlier in
18 late 2005?

19 A. I believe that conversation
20 was in the meeting we had at the beginning of
21 2006, but I'm not 100 percent certain of that.

22 Q. Okay. Let's focus on your
23 first meeting with Mr. Merkin.

24 Can you describe for me in as
25 much detail as you can recall the circumstances

1 of that meeting.

2 A. I just have a -- it's very
3 hard for me to separate out the two
4 conversations.

5 Q. Okay.

6 A. I remember where the meeting
7 was. You know, it was in his office. We
8 talked more about sort of general stuff as
9 opposed to getting into nitty-gritty
10 investment, but I don't really have much
11 recollection of specifics.

12 Q. All right. Do you have any
13 recollection of what you discussed at that
14 meeting?

15 A. I know that we -- I mean, we
16 talked about things that had absolutely nothing
17 to do with the investments. I actually
18 remember something specific about I guess one
19 of his daughters was thinking about going to
20 Bryn Mawr College. For some reason, that
21 sticks in my mind.

22 You know, we talked about sort
23 of general investing. He asked about my
24 family, about the connection to Max Palevsky's
25 family, and we talked about Cerberus and

1 AbleCo, and we talked about Gabriel Capital.

2 Q. Do you recall any specifics
3 about your discussion about Gabriel Capital?

4 A. No, not any -- not any sort of
5 very specific things, no.

6 Q. Approximately how long did
7 your meeting last?

8 A. I assume it was an hour, but I
9 don't know.

10 Q. And the second time you met
11 Mr. Merkin was in February of 2006; is that
12 correct?

13 A. Yes, I believe so.

14 Q. Can you describe for me in as
15 much detail as you can what you recall about
16 that meeting.

17 A. Again, it was in his office.
18 You know, I remember him -- there was a
19 specific conversation about the Yeshiva
20 endowment. There was a conversation about both
21 Gabriel and Ascot.

22 I remember him talking about
23 sort of the endowment performance relative to
24 other endowments, and he was very proud of the
25 fact that they were pushing up against, you

1 know, sort of the Harvard, Yale type from a
2 return perspective, and, you know, so there was
3 that sort -- that was a new sort of avenue in
4 the conversation that I don't believe was a
5 part of the 2000 -- the earlier meeting.

6 Q. Do you have any connection to
7 Yeshiva?

8 A. No.

9 Q. Did Mr. Merkin provide any
10 specifics as to -- as to explain the success of
11 the Yeshiva endowment?

12 MR. STEINER: Objection to form.

13 BY THE WITNESS:

14 A. No.

15 BY MR. JACOBS:

16 Q. I have just been informed we
17 have about ten minutes on the -- left on the
18 tape. So I might ask another question or two, and
19 then we will take a short break. Is that okay?

20 A. Sure, yeah.

21 Q. Approximately how long after
22 your second meeting with Mr. Merkin did you
23 recommend the investment in Ascot?

24 A. I believe it was in the sort
25 of following couple or few months, but I'm not

1 sure.

2 Q. Approximately how long after
3 you recommended the investment did the family
4 foundation invest?

5 A. Again, I believe it was, you
6 know, within a few months.

7 MR. JACOBS: I think we should take
8 our break, if that's okay.

9 THE VIDEOGRAPHER: Going off the
10 video record at 10:54 a.m. at the end of tape
11 1.

12 (WHEREUPON, a recess was had at
13 10:54 a.m. until 11:08 a.m.)

14 THE VIDEOGRAPHER: Going back on
15 the video record at 11:08 a.m. at the beginning
16 of tape 2.

17 (WHEREUPON, a certain document
18 was marked Trustee Deposition
19 Exhibit No. 95, for
20 identification, as of
21 10/22/12.)

22 BY MR. JACOBS:

23 Q. Mr. Gottlieb, I am handing you
24 what I am -- what I have marked as Trustee
25 Exhibit 95.

1 A. Yeah.

2 Q. Do you recognize this
3 document?

4 A. Sure.

5 Q. What is this document?

6 A. This is the email between
7 myself and Mike Autera about the Glen Eagle
8 investment in Gabriel and the foundation
9 investment in Ascot.

10 Q. What was the amount of the
11 initial investment in Ascot?

12 A. 500,000? Yes, 500,000.

13 Q. What was the amount of the
14 initial investment in Gabriel?

15 A. A million.

16 Q. At the top of the chain,
17 Mr. Autera writes: "We are hoping to have the
18 documents back from the lawyers by Friday. I
19 will forward them to you as soon as they are
20 available."

21 Do you see that?

22 A. Yeah.

23 Q. Do you recall receiving
24 documents from Mr. Autera?

25 A. I have no idea.

1 Q. At the time you recommended
2 the investment in Ascot to the family
3 foundation, were you aware that the Ascot Fund
4 was invested with Madoff?

5 A. No.

6 Q. At any time did you come to
7 learn that the Ascot Fund was invested with
8 Madoff?

9 A. Yeah, when we got the letter
10 from -- I believe it was from Mr. Merkin in
11 December of 2008.

12 Q. Did you receive that letter
13 after Mr. Madoff had been arrested?

14 A. Yeah, I mean, because Mr. --
15 Mr. Madoff was arrested like immediately when
16 the -- when the news broke. So, yes, it would
17 have been after.

18 Q. After that initial \$500,000
19 investment, do you know if the family
20 foundation made any subsequent investments in
21 Ascot?

22 A. I don't believe so.

23 Q. Are you -- at the time --
24 strike that.

25 Are you aware that the Ascot

1 Fund existed solely as a feeder fund to
2 Mr. Madoff?

3 MR. STEINER: Objection to form.

4 BY THE WITNESS:

5 A. I -- I understand that the
6 overall majority of the capital was invested
7 with Madoff. I guess I couldn't say for
8 certain that it was solely.

9 BY MR. JACOBS:

10 Q. When did you come to that
11 understanding?

12 A. When we received the letter
13 from Mr. Merkin.

14 Q. That's the 2000 --

15 A. End of 2008.

16 Q. -- December of 2008?

17 A. Yeah, 2008.

18 Q. What was your reaction when
19 you received that letter?

20 A. Shocked.

21 Q. Why were you shocked?

22 A. Because we had been talking a
23 lot about Bernie Madoff in the office, and one
24 of the things we said is, boy, you know, for
25 all the crap that we are dealing with right now

1 at the end of 2008, I am glad we are not
2 involved in this one.

3 Q. At any time did Mr. Merkin
4 inform you that the Ascot Fund was invested
5 with Madoff?

6 MR. STEINER: Objection to form.

7 BY THE WITNESS:

8 A. Prior to the letter, no.

9 BY MR. JACOBS:

10 Q. Prior to December of 2008, did
11 you have any reason to suspect that the Ascot
12 Fund might be invested with Madoff?

13 MR. STEINER: Objection to form.

14 BY THE WITNESS:

15 A. Not that I -- no.

16 BY MR. JACOBS:

17 Q. Did you receive an Ascot Fund
18 Offering Memorandum?

19 A. I assume so. Yeah, I would
20 assume that we did. I would assume that the
21 foundation did.

22 BY MR. JACOBS:

23 Q. Do you recall personally ever
24 reviewing the Ascot --

25 A. No.

1 one?

2 A. Not that I can recall, no.

3 Q. Did you exchange any emails
4 with Mr. Merkin after this one?

5 A. No.

6 Q. Okay. Would it be fair to
7 characterize the Ascot Fund as a fund of funds?

8 MR. STEINER: Object to the form.

9 BY THE WITNESS:

10 A. No.

11 BY MR. JACOBS:

12 Q. Why not?

13 A. Fund of funds has multiple
14 underlying funds.

15 Q. Okay. Do you have any reason
16 to believe that Mr. Merkin would have known
17 about your grandfather's skepticism of Bernie
18 Madoff?

19 MR. STEINER: Objection to form.

20 BY THE WITNESS:

21 A. No, no.

22 BY MR. JACOBS:

23 Q. Turning to the -- turning to
24 Glen Eagle Partners investment in Gabriel.

25 A. Yeah.

1 Q. Prior to Mr. Madoff's arrest
2 in December of 2008 --

3 A. Yes.

4 Q. -- did you have any knowledge
5 that the Gabriel Fund was invested with
6 Mr. Madoff?

7 A. No.

8 Q. Did you learn about Gabriel's
9 exposure to Madoff in December of 2008?

10 A. I believe so, yeah.

11 Q. Okay. In the late 2005, 2006
12 meetings you had with Mr. Merkin --

13 A. Yeah.

14 Q. -- did he disclose to you that
15 the Gabriel Fund was invested with Madoff?

16 A. No.

17 Q. Did Mr. Merkin disclose to you
18 that the Gabriel Fund was invested with any
19 other money managers?

20 A. My understanding of Gabriel is
21 that it was a distressed debt credit fund, and
22 that they would on occasion co-invest in
23 specific deals that Cerberus was involved in
24 which for whatever reason had some additional
25 capacity or because of the Cerberus exposure

1 they weren't able to take the whole deal, but
2 that the majority of the capital was being done
3 by his guys in-house.

4 Q. Okay. Was that understanding,
5 in fact, true?

6 MR. STEINER: Objection to form.

7 BY THE WITNESS:

8 A. No, it was not.

9 BY MR. JACOBS:

10 Q. Why not?

11 A. My understanding is that most
12 of the money was actually with Cerberus. That
13 part of it was with Madoff, and I believe there
14 was a third investor, but that the amount of
15 money that they were investing directly was de
16 minimus, if any.

17 Q. Did Mr. Merkin explain any of
18 that to you when you met with him?

19 A. No.

20 MR. STEINER: Objection to form.

21 BY MR. JACOBS:

22 Q. Okay. Would you consider
23 those facts to be important in deciding whether
24 to invest in Gabriel?

25 MR. STEINER: Objection to form.

1 Q. Have you seen this document
2 before?

3 A. Yeah.

4 Q. Do you recall when you first
5 saw it?

6 A. I may have seen it in 2006. I
7 definitely reviewed it at the end of 2008.

8 Q. Were you reviewing this
9 document in December of 2008 to see if
10 Mr. Madoff's involvement in the Gabriel Fund
11 was disclosed?

12 MR. STEINER: Objection to the
13 form.

14 BY THE WITNESS:

15 A. We were reviewing it to just
16 get a better sense of what had been going on at
17 Gabriel. Although, I mean, given the fact that
18 we were no longer investors with Gabriel, it
19 was certainly not as high on our list as Ascot
20 was.

21 BY MR. JACOBS:

22 Q. So just the initial investment
23 in Gabriel of a million dollars; is that
24 correct?

25 A. Yes, that's correct.

1 Q. Was made in 2006?

2 A. Yes.

3 Q. Were any subsequent
4 investments made in Gabriel?

5 A. No.

6 Q. You just mentioned that in
7 December 2008 you were no longer or Glen
8 Eagle -- Glen Eagle Partners was no longer
9 invested --

10 A. Correct.

11 Q. -- with Gabriel.

12 When did Glen Eagle Partners
13 fully divest itself of that investment?

14 A. I believe we withdrew in the
15 spring of 2008.

16 Q. Okay. Prior to the spring of
17 2008, did Glen Eagle Partners redeem any
18 portion of its investment?

19 A. I don't think so, no.

20 Q. Why did Glen Eagle Partners
21 redeem its investment in approximately I
22 believe you said the spring of 2008?

23 A. You know, the fund had been
24 doing okay, and we had looked at it as --
25 essentially, I had invested in it with the idea

1 someone who there was a reason to withdraw from
2 and that reason never manifested itself.

3 Q. Did that reason ever manifest
4 itself?

5 MR. STEINER: Objection to form.

6 BY THE WITNESS:

7 A. Well, certainly in 2008 it
8 did, but I mean it was still a huge surprise,
9 huge surprise.

10 BY MR. JACOBS:

11 Q. Do you believe that Mr. Merkin
12 intentionally concealed the Ascot Fund's
13 exposure to Madoff from you?

14 MR. STEINER: Objection to form.

15 BY THE WITNESS:

16 A. I don't see how he couldn't
17 have. I just -- I believe that I was supposed
18 to think that there was trading going on at --
19 I don't even know the name of the umbrella
20 organization under which Gabriel and Ariel and
21 Ascot all set, but there were people there that
22 were engaging in a whole variety of strategies
23 from the sort of less liquid stuff that Gabriel
24 was doing to the more liquid stuff that Ascot
25 was doing. And I thought it was going on in

1 the offices and at the terminals that I saw
2 when I went there.

3 Q. What -- what reasons do you
4 believe Mr. Merkin might have had to conceal
5 the Madoff exposure in the Ascot Fund from you?

6 MR. STEINER: Objection to form.

7 BY THE WITNESS:

8 A. I don't know because, you
9 know, other people knew this. I found out
10 after the fact that, you know, some people
11 thought it was common knowledge that Ascot was
12 invested in Madoff, and, in fact, they were
13 just as surprised that it wasn't common
14 knowledge as we were that it was. So I
15 can't -- I have no idea.

16 BY MR. JACOBS:

17 Q. Do you believe that Mr. Merkin
18 was actively concealing from you Gabriel's
19 Madoff exposure?

20 MR. STEINER: Objection to form.

21 BY THE WITNESS:

22 A. I believe that -- that he was
23 misleading that the capital was being run by
24 third-party managers. I can't say that he was
25 specifically hiding the Madoff exposure per se

1 Mr. Steiner's characterization of there being
2 inaccuracies in this article?

3 MR. STEINER: Objection to form.

4 BY THE WITNESS:

5 A. I think that, you know, we are
6 dancing around semantics about what it means to
7 approach the foundation. So the foundation did
8 not know about Ascot until Mr. Merkin
9 introduced the idea to me while I was in his
10 office for a meeting regarding Gabriel.

11 MR. JACOBS: Thank you very much.
12 I have no further questions.

13 MR. STEINER: I guess we didn't ask
14 them on the phone, but do you either of you
15 have any questions?

16 MR. SCOTT: This is John Scott. No
17 questions from me.

18 MR. NEWCOMB: Ascot has no
19 questions either.

20 THE VIDEOGRAPHER: Going off the
21 video record at 1:22 p.m. at the end of tape 4.

22 (WHEREUPON, the deposition was
23 concluded at 1:22 p.m.)
24
25